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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,720	12/28/2001	Earl J. Braxton	NMC104A US	2117
21133 7590 03/17/2009 VAN OPHÉM & VANOPHEM, PC REMY J VANOPHEM, PC 51543 VAN DYKE SHELBY TOWNSHIP, MI 48316-4447				
EXAMINER				
LE, HUYEN D				
ART UNIT		PAPER NUMBER		
3751				
MAIL DATE		DELIVERY MODE		
03/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/034,720

Applicant(s)

BRAXTON, EARL J.

Examiner

Huyen Le

Art Unit

3751

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-10, 12-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) 4, 9, 14 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 8, 10, 13, 15, 17 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is unclear to what applicant means by "said opposed planar end walls and said opposed planar side walls being in direct contact with at least a portion of a respective one of said planar side walls". Can the opposed planar side walls be in direct contact with at least a portion of a respective one of the planar side walls?

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2 ,5, 7,10,12,15,17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl in view of Tegg et al.

Dahl teaches a toilet shelter employing four walls which can be folded to a state best shown in Fig. 2 where adjacent walls lie superimposed. Lacking in Dahl is a base which is circumscribed by the side walls. Tegg et al teach a knock down toilet where

base 11 is employed and shown to be circumscribed by the sides of the unit. As both teach toilet enclosures, it would have been obvious to the ordinary artisan to provide Dahl with a base and roof cooperating with the sides as taught by Tegg et al as the use of perfecting features of one device in the environment of another like device would have been prima facie obvious to the ordinary artisan, in order to glean the properties of said features.

Alternatively it would have been obvious to provide for the use of the wall connection scheme of Dahl to replace the scheme of Tegg et al as the two would have constituted obvious alternative assembly/disassembly schemes both shown used in identical art devices. The claim 5 "commode" is taught by Tegg et al at 53 and as Dahl teaches in col. 1, line 17, "a temporary privy" it would have been obvious to employ a "commode" therein.

The various states of folding are nothing more than method of intended use and do not patentably define in this apparatus claim environment. Furthermore, Dahl is capable of attaining any folded state that the instant device can attain.

5. Claims 3, 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Braxton '836.

The latter teaches, in col. 3, lines 21+, the use of rivets to connect hinges to wall panels of portable toilets, the use of which in Dahl would have constituted an obvious expedient known to the ordinary artisan.

Response to Arguments

6. Applicant's arguments filed 11/07/08 have been fully considered but they are not persuasive.

Applicant raises the issue of prima facie case of obviousness that there is no implication, suggestion or inference whatsoever to combine the teaching of Dahl and Tegg et al to obviate the applicant's invention because the reference are contrary to each other (pages 13-19 of the remarks). Examiner disagrees with applicant. Again, Dahl teaches a portable shelter as claimed but lacks a base and a roof. On the hand, Tegg et al teach a portable shelter having a base and a roof. The motivation to combine these references is based on the facts that both references teach a portable toilet shelter. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Dahl and Tegg et al to provide a shelter with a loop enclosure, a base and a roof. The issue has been addressed before the Board of Appeals. The prima facie in this case is found proper in the decision of the Board of Appeals tendered 3/28/2007.

Applicants arguments with respect to the thickness of the portable toilet shelter when the shelter is collapsed to a final stackable transport state on pages 19-22 and the intended use language appear to mirror those pages 5-16 of the appeal brief of 4/10/06 and accordingly find rebuttal in the decision of the Board of Appeals tendered 3/28/07.

Finally, the amendment filed on 11/07/2008 does not change the previous claimed structures. Accordingly, the rejections tendered before the Board of Appeals are repeated.

The following is noted:

A Board of Patent Appeals and Interferences decision in an application has *res judicata* effect and is the “law of the case” and is thus controlling in that application and any subsequent, related application. Therefore, a submission containing arguments without either an amendment of the rejected claims or the submission of a showing of facts will not be effective to remove such rejection. See MPEP § 706.03(w) and 1214.01.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson, can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Huyen Le/
Primary Examiner
Art Unit 3751